

Application No. 10/749,368  
Response dated March 15, 2006  
Reply to Office Action of December 15, 2005

**REMARKS**

Claims 1-64 are presented for Examiner Hill's consideration.

Applicants appreciate the removal of the objections to the drawings and the claims.  
Applicants respectfully request that item #10 on the Office Action Summary be marked  
"accepted."

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of  
the following arguments is respectfully requested.

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### **ARGUMENTS**

By way of the Office Action mailed 12/15/2005, claims 1-6, 8-14, 17-27, 29-35, 39-48, 50-56, and 59-64 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,129,720 to Blenke *et al.* (*Blenke*) in view of U.S. Patent Number 6,428,526 to Heindel *et al.* (*Heindel*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. §§ 2142, 2143.

The Examiner has failed to make a *prima facie* case of obviousness because the combination of *Blenke* and *Heindel* does not teach or suggest all the claim limitations and there is no suggestion or motivation to combine the references.

#### **Claim Limitations Missing**

Independent claims 1, 22, 43, and 64 require, in part,

an elastic inner layer, wherein the elastic inner layer has an elastic inner layer perimeter and wherein the elastic inner layer defines an opening

Independent claims 1, 22, 43, and 64 also require, in part,

A fastener located in the front waist region and adapted to engage into the elastic inner layer in the back waist region

**AND**

A fastener located in the back waist region and adapted to engage into the outer layer in the front waist region

First, neither *Blenke* nor *Heindel*, alone or in combination, teach or suggest two fasteners having these requirements. The Examiner acknowledges at page 3 that

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Blenke does not expressly disclose a fastener adapted to engage into the elastic inner layer in the back waist region and another fastener adapted to engage into the outer surface of the outer layer in the front waist region.

The Examiner looks to *Heindel* for the missing elements, stating at page 3 that

Heindel discloses disposable diaper 20 (column 4, lines 20-23) with first fastening hook element 40 attached into the body side liner/inner layer 24 to the rear waist region and the second fastening loop material 42 will be attached to the outer surface near the front waist region such that the mechanical fasteners can be protected prior to use and can attach the diaper about the waist of the wearer (column 6, lines 50-63, figures 2-3). (emphasis added).

Applicants respectfully disagree. The loop material 42 of *Heindel* is not "adapted to engage into the elastic inner layer in the back waist region" as required by Applicants' claims and therefore *Heindel* fails to suggest or teach two fasteners having the claimed requirements.

Second, neither *Blenke* nor *Heindel*, alone or in combination, teach or suggest a fastener in the back waist region located laterally inward of each longitudinal side edge as required by Applicants' claims 1 and 22. Both *Blenke* and *Heindel* teach fasteners in the back waist region that extend laterally outward of each longitudinal side edge.

Third, the term "opening" should be defined in accordance with the specification. The Examiner states at page 3 that *Blenke* discloses "an elastic body side liner/inner layer 24 defining a waist opening (column 5, lines 15-17)." (emphasis added). The "waist opening" of *Blenke* is not the "opening" of the claims as properly interpreted in view of the specification.

Referring to page 12 of Applicants' specification,

The elastic inner layer 20 may define an opening 90 where the opening 90 may be located in an internal position to the perimeter 25 of the elastic inner layer 20. The elastic inner layer perimeter 25 generally corresponds to the border defined by the elastic inner layer 20. The opening 90 may in the form of a slit or aperture.

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Furthermore, the opening 90 is illustrated in Figures 1 and 9. Based at least on this disclosure, neither *Blenke* nor *Heindel*, alone or in combination, teach or suggest an elastic inner layer defining an "opening" and therefore fail to render Applicants' claim obvious.

Therefore, for at least any or all of the foregoing reasons, the combination of *Blenke* and *Heindel* fails to render Applicants' claims obvious because all the claim elements are not taught or suggested.

### **No Motivation to Combine**

Additionally, there is no motivation to combine *Blenke* and *Heindel*. The Examiner states, starting at page 3, that

One would be motivated to modify the fastener of *Blenke* with the fasteners engaging the inner and outer layers of *Heindel* to provide a fastening mechanism to encircle the disposable garment about the wearer's waist since both references are in the same field of endeavor; disposable absorbent wearing garments with fastening means. (emphasis added).

Applicants respectfully disagree with the sufficiency of this "motivation." One skilled in the art would readily appreciate that *Blenke* already provides "a fastening mechanism to encircle the disposable garment about the wearer's waist." Specifically, *Blenke* discloses at column 6, lines 52-56 that

Fastening tabs 20, 22 can comprise hook fasteners for securing rear portion 14 of absorbent article 8 to looped material at front portion 10. Other well known securing elements can be used to support absorbent article 8 on the user. (emphasis added).

The Examiner has merely solved a "problem" that did not exist. This is not proper motivation to establish a *prima facie* case of obviousness.

Therefore, because the combination of *Blenke* and *Heindel* does not teach or suggest all the claim limitations and there is no suggestion or motivation to combine the references, Applicants respectfully request that the rejections as to claims 1, 22, 43, and 64 be withdrawn. Similarly, claims 2-6, 8-14, 17-21, 23-27, 29-35, 39-42, 44-48, 50-56 and 59-63 depend from claims 1, 22, 43 or 64 and are patentably distinct over the combination

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of *Blenke* and *Heindel* for at least the same reasons. Applicants respectfully request that the rejections as to these claims also be withdrawn.

By way of the Office Action mailed 12/15/2005, claims 7, 28 and 49 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,428,526 to *Heindel et al. (Heindel)* in view of U.S. Patent Number 6,129,720 to *Blenke et al. (Blenke)*, and further in view of U.S. Patent Number 5,957,907 to *Sauer* (hereinafter *Sauer*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed previously, the combination of *Heindel* and *Blenke* fails to support a *prima facie* case of obviousness. *Sauer* includes a pair of fasteners 50 which are employed to secure the diaper 20 about the waist of a wearer (column 4, lines 38-39) but does not teach a fastener in the front waist region adapted to engage into the elastic inner layer in the back waist region as required by Applicants' claims. Therefore, the addition of *Sauer* does not cure the defects of *Heindel* and *Blenke* and the combined prior art references fail to teach or suggest all the claim limitations.

Additionally, the Examiner acknowledges at page 6 that, "Heindel/Blenke do not expressly disclose the outer layer has one or more pleats."

The Examiner looks to *Sauer* to purportedly find the missing element stating that

*Sauer* further discloses outer cover 32 may be pleated/embossed or otherwise provided with a matte finish to provide a more aesthetically pleasing appearance (col. 6, line 67 - col. 7, line 2). (emphasis added).

Applicants respectfully disagree and note that the Examiner has inserted the word "pleated" and by implication equated "pleated" and "embossed" without any basis or explanation.

The term "pleated" should be interpreted in accordance with the specification. Page 16, lines 13-16 of Applicants' specification, states that

An example of an outer layer 80 having a three-dimensional shape is to provide an outer layer 80 that has one or more pleats. The pleats permit an outer layer 80 having a length that is greater than the length of an attached elastic inner layer 20 in the cross-direction of the garment 100.

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The specification at Figures 5, 6 and 8 also illustrates exemplary pleats.

Therefore, the "embossed" outer cover of *Sauer* does not teach the "pleats" of Applicants' claims as properly interpreted in view of the specification and the combination of *Blenke*, *Heindel*, and *Sauer* fails to teach every claim element. Ergo, the combination fails to render Applicants' claims obvious.

Furthermore, there is no motivation to combine *Sauer* with *Blenke* or *Heindel*, alone or in combination. The Examiner states at page 6 that

One would be motivated to modify the outer cover of *Blenke/Heindel* with the pleated outer cover of *Sauer* to provide a more aesthetically pleasing appearance since all references are in the same field of endeavor; disposable articles with fasteners that absorb bodily wastes. (emphasis added).

Applicants respectfully disagree with the sufficiency of this purported motivation. Merely restating a professed attribute of *Sauer* is not a suggestion or motivation that would lead one skilled in the art to modify the references or combine reference teachings.

For at least these reasons, the rejections as to these claims should be withdrawn.

By way of the Office Action mailed 12/15/2005, claims 15-16, 36-37, and 57-58 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,129,720 to *Blenke et al. (Blenke)* in view of U.S. Patent Number 6,428,526 to *Heindel et al. (Heindel)*, and further in view of U.S. Patent Number 4,990,147 to *Freeland* (hereinafter *Freeland*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed previously, neither *Blenke* nor *Heindel*, alone or in combination, teach or suggest a fastener located in the front waist region and adapted to engage into the elastic inner layer in the back waist region. The addition of *Freeland* does not cure this defect. Therefore, claims 1, 22, and 43 are patentably distinct over the combination of *Blenke*, *Heindel*, and *Freeland*. Likewise, claims 15-16, 36-37 and 57-58, which depend therefrom, are patentably distinct for at least the same reason.

Additionally, the Examiner acknowledges at page 6 that, "*Blenke/Heindel* do not expressly disclose non-coextensive inner and outer layers."

The Examiner looks to *Freeland* to find the missing element stating at page 7 that

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One would be motivated to modify the article of *Blenke/Heindel* with the shorter and smaller elastic inner layer to provide a diaper that will accommodate a user since all references disclose disposable absorbent wearing articles with fasteners. (emphasis added).

Applicants respectfully disagree with the sufficiency of this purported motivation. One skilled in the art would not be motivated to combine the references based on this supposed benefit of *Freeland*. The design of *Freeland* is considerably different than either *Blenke* or *Heindel*. *Freeland* creates a void space 28 between the liner 12 and the core 18 via the foreshortened liner 12 (column 6, lines 29-31).

In contrast, there is no suggestion or motivation that such a void space would be compatible or desirable in the designs of *Blenke* or *Heindel*. It appears that the Examiner is using hindsight to pick and choose pieces of the prior art in an effort to find Applicants' claim limitations. This is not permissible and the rejection as to these claims should be withdrawn.

For any and all the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.


Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3016.

Respectfully submitted,

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